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13 December 1954

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Memorandum for: [REDACTED]

Subject : Retired Naval Reservists

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1. Reference is made to Staff Agent Contract with [REDACTED] effective as of October 30, 1954. Particular reference is made to Paragraph 2(b) thereof which provides that [REDACTED] is not entitled to retain any pension payments received from the United States Government based on his retirement from the United States Navy while he enjoys full-time staff status with the Central Intelligence Agency. Provisions are also made for remission of any payments to the Government.

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2. You have requested that this office consider the applicability of the cited provision in the light of a recent Court of Claims case, *Paul Tanner v. The United States*, No. 543-53, decided November 2, 1954. In effect, the Court of Claims reviewed the various decisions of the Comptroller General in the area of retired reservists and concluded, in particular, that Army Reserve or Air Force Reserve officers on the retired list, who are otherwise entitled to receive retired pay, may retain such pay even though they hold civilian employment with the Government for which they are paid \$3,000 or more per annum. The Court of Claims had the problem of resolving statutory incongruities between Section 212 of the Economy Act of June 30, 1932, 47 Stat. 406, as amended by 54 Stat. 761, and Title 3 of the Act of June 29, 1948, 62 Stat. 1087, 10 U.S.C. 1036, et seq., which authorized retired pay for Reserve officers of the Army who have reached the age of 60 and have had 20 or more years of satisfactory service. You will recognize, of course, the initial reference as pertaining to the dual compensation and employment laws. Pertinent to the consideration of the aforesaid statutory incongruities is the Act of July 1, 1947, 61 Stat. 238, 10 U.S.C. 371 and 371b, which, in effect, is an exceptive provision to the dual compensation and employment laws. In 25 Comp. Gen. 521, it was held that, in view of the express provisions of Section 4 of the Naval

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Reserve Act of 1938, an exceptive provision of the dual compensation and employment laws, a retired member of the Naval Reserve could draw retired pay, computed in part on the basis of service as a commissioned officer and, at the same time, hold a Government civilian paying position paying \$3,750 per annum. The aforesaid provision was repealed by the Act of July 9, 1952, 66 Stat. 481, 50 U.S.C. 901, et seq. Section 246, Chapter 5 of Part II of the Act of July 9, 1952, re-enacts the existing law which provides that reservists not on active duty are not considered to be holding offices of profit and trust or discharging any official function under the Federal Government solely by virtue of their status as members of the Reserve components. In effect, this provision protects reservists against dual compensation and employment laws. The Comptroller General has not ruled on this Act and, though it is most unlikely that he would disagree with the above reasoning, it does not follow that he may not withhold pension payments of retired reservists.

3. This matter has been discussed informally with representatives of the Comptroller General. According to the rules of procedure of the Court of Claims, judgments are not effective until 90 days following the entry of judgment. The Tanner Case, previously referred to, will not be followed by the Comptroller General for at least another 90 days inasmuch as the entry of judgment has not been effected. At that time, it is assumed that the Secretary of Defense or the Attorney General will request the Comptroller General to indicate his policy of complying with the Tanner precedent. It is our informal understanding with representatives of the Comptroller General that the Tanner precedent and related precedents will be followed by the Comptroller General.

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Assistant General Counsel

Attachment

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cc: Subject, Signer, Chrono

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